

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

KAMAU A. DAVIS,	)	Case No. CV 15-4057-JGB (JPR)
	)	
Petitioner,	)	
	)	ORDER TO SHOW CAUSE
vs.	)	
	)	
JIM McDONNELL, Sheriff,	)	
	)	
Respondent.	)	
	)	

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On February 6, 2015, Petitioner, a state pretrial detainee, filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241,<sup>1</sup> challenging the apparent denial of his motion to sever the trial of counts in his upcoming criminal prosecution. Pet. & Mem. of Law, Davis v. McDonnell, No. CV 15-0867-JGB (JPR) (C.D. Cal. Feb. 6, 2015), ECF Nos. 1 & 2. The Court ordered Petitioner to show cause why the petition should not be dismissed under Younger v. Harris, 401 U.S. 37, 45-46 (1971), and its progeny. See Order to Show Cause, Davis, No. CV 15-0867-JGB (JPR) (C.D.

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<sup>1</sup> Section 2241(c)(3) permits a federal court to grant relief to a state pretrial detainee who is being held "in custody in violation of the Constitution." Section 2254 does not apply because Petitioner is apparently not in custody under a state-court judgment.

1 Cal. Feb. 11, 2015), ECF No. 4. After Petitioner responded to  
2 the OSC (Resp. to Show Cause Order, id. (C.D. Cal. Apr. 7, 2015),  
3 ECF No. 7), the Court dismissed the petition without prejudice  
4 and administratively closed the case under Younger (Judgment &  
5 Order Dismissing Habeas Pet. Without Prejudice & Administratively  
6 Closing Case, id. (C.D. Cal. Apr. 20, 2015), ECF Nos. 8 & 9).

7 Despite this earlier sequence of events, Petitioner has  
8 filed another habeas petition under § 2241, this time challenging  
9 the trial court's denial of his Pitchess and suppression motions  
10 and its apparent refusal to appoint a particular police-practices  
11 expert. (Pet. at 3-4.) His state proceedings are still not  
12 final; indeed, it does not appear that Petitioner has yet been  
13 tried. Thus, the latest Petition also appears subject to  
14 dismissal under Younger. Recognizing this, Petitioner argues  
15 that Younger does not apply because the trial court has acted in  
16 "bad faith" and is "harassing" him. (Mem. of Law at 11-14.) But  
17 Petitioner's conclusory statements to that effect do not make it  
18 so. Indeed, the pages of the state-court transcript that  
19 Petitioner attached to the Petition do not display any bad faith  
20 or harassment by the trial judge, although he does at times  
21 appear exasperated with Petitioner, who is representing himself  
22 in his criminal case. That is not sufficient to demonstrate any  
23 kind of impermissible prejudice or bias. Cf. Galvan v. Ayers,  
24 292 F. App'x 643, 646 (9th Cir. 2008) (habeas petitioner's  
25 "allegations that the judge appeared angry and exasperated" with  
26 him "insufficient to establish judicial bias").

27 Petitioner relies on McNeely v. Blanas, 336 F.3d 822 (9th  
28 Cir. 2003) (as amended), in support of his argument that Younger

1 does not require abstention. (Mem. of Law at 13.) But none of  
2 Petitioner's claims "embody a right which is necessarily  
3 forfeited by delaying review until after trial," see Carden v.  
4 Montana, 626 F.2d 82, 84 (9th Cir. 1980), and therefore  
5 intervention is not appropriate under McNeely. See Wright v.  
6 Volland, 331 F. App'x 496, 498 (9th Cir. 2009) (distinguishing  
7 McNeely).<sup>2</sup>

8 Finally, as the Court previously explained to Petitioner in  
9 Case No. CV 15-0867-JGB (JPR), even though he apparently seeks to  
10 raise in his federal Petition only claims that have already been  
11 rejected by the state courts (see Pet. at 2-3), nothing in the  
12 Petition or its attachments indicates that he has not had and  
13 indeed will not have, on appeal, an adequate opportunity to  
14 litigate any federal constitutional claims. Thus, his claims  
15 have not yet been exhausted.<sup>3</sup>

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17 <sup>2</sup> It is true that under Stone v. Powell, 428 U.S. 465, 481-82  
18 (1976), Petitioner may be foreclosed from challenging the denial of  
19 his suppression motions in any subsequent federal habeas  
20 proceedings under § 2254. That, of course, cannot entitle him to  
21 have the claims heard prematurely under § 2241, or every pretrial  
22 detainee whose suppression motion was denied in state court could  
23 immediately seek federal habeas relief.

24 <sup>3</sup> Indeed, when a state criminal case is pending, "a would-be  
25 habeas corpus petitioner must await the outcome of his appeal  
26 before his state remedies are exhausted, even where the issue to be  
27 challenged in the writ of habeas corpus has been finally settled in  
28 the state courts." Sherwood v. Tomkins, 716 F.2d 632, 634 (9th  
Cir. 1983); cf. also Henderson v. Johnson, 710 F.3d 872, 874 (9th  
Cir. 2013) ("Sherwood stands for the proposition that a district  
court may not adjudicate a federal habeas petition while a  
petitioner's direct appeal is pending."). "This is because 'the  
pending appeal may result in reversal of the petitioner's  
conviction on some other ground, thus mooting the federal  
question.'" Alvarez v. Barnes, No. CV 13-367-RGK (CW), 2013 WL  
(continued...)

1 IT THEREFORE IS ORDERED that within 14 days of the date of  
2 this Order, Petitioner show cause in writing, if he has any, why  
3 the Court should not deny the Petition without prejudice and  
4 dismiss this action under Younger. Petitioner is warned that his  
5 failure to timely and satisfactorily respond to this Order may  
6 result in his Petition being dismissed for the reasons stated  
7 above and for failure to prosecute.

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10 DATED: June 3, 2015

  
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JEAN ROSENBLUTH  
U.S. MAGISTRATE JUDGE

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27 <sup>3</sup>(...continued)  
28 3200514, at \*3 (C.D. Cal. June 21, 2013) (quoting Sherwood, 716  
F.2d at 634).